

§ 780.104

bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

§ 780.104 How modern specialization affects the scope of agriculture.

The effect of modern specialization on agriculture has been discussed by the U.S. Supreme Court as follows:

Whether a particular type of activity is agricultural depends, in large measure, upon the way in which that activity is organized in a particular society. The determination cannot be made in the abstract. In less advanced societies the agricultural function includes many types of activity which, in others, are not agricultural. The fashioning of tools, the provision of fertilizer, the processing of the product, to mention only a few examples, are functions which, in some societies, are performed on the farm by farmers as part of their normal agricultural routine. Economic progress, however, is characterized by a progressive division of labor and separation of function. Tools are made by a tool manufacturer, who specializes in that kind of work and supplies them to the farmer. The compost heap is replaced by factory produced fertilizers. Power is derived from electricity and gasoline rather than supplied by the farmer's mules. Wheat is ground at the mill. In this way functions which are necessary to the total economic process of supplying an agricultural produce become, in the process of economic development and specialization, separate and independent productive functions operated in conjunction with the agricultural function but no longer a part of it. Thus the question as to whether a particular type of activity is agricultural is not determined by the necessity of the activity to agriculture nor by the physical similarity of the activity to that done by farmers in other situations. The question is whether the activity in the particular case is carried on as part of the agricultural function or is separately organized as an independent productive activity. The farmhand who cares for the farmer's mules or prepares his fertilizer is engaged in agriculture. But the maintenance man in a powerplant and the packer in a fertilizer factory are not employed in agriculture, even if their activity is necessary to farmers and replaces work previously done by farmers. The production of power and the manufacture of fertilizer are independent productive functions, not agriculture (see *Farmers Reservoir Co. v. McComb*, 337 U.S. 755 cf. *Maneja v. Waialua*, 349 U.S. 254).

29 CFR Ch. V (7-1-11 Edition)

§ 780.105 "Primary" and "secondary" agriculture under section 3(f).

(a) Section 3(f) of the Act contains a very comprehensive definition of the term "agriculture." The definition has two distinct branches (see *Farmers Reservoir Co. v. McComb*, 337 U.S. 755). One has relation to the primary meaning of agriculture; the other gives to the term a somewhat broader secondary meaning for purposes of the Act (*NLRB v. Olaa Sugar Co.*, 242 F. 2d 714).

(b) First, there is the primary meaning. This includes farming in all its branches. Listed as being included "among other things" in the primary meaning are certain specific farming operations such as cultivation and tillage of the soil, dairying the production, cultivation, growing and harvesting of any agricultural or horticultural commodities and the raising of livestock, bees, fur-bearing animals or poultry. If an employee is employed in any of these activities, he is engaged in agriculture regardless of whether he is employed by a farmer or on a farm. (*Farmers Reservoir Co. v. McComb*, supra; *Holtville Alfalfa Mills v. Wyatt*, 230 F. 2d 398.)

(c) Then there is the secondary meaning of the term. The second branch includes operations other than those which fall within the primary meaning of the term. It includes any practices, whether or not they are themselves farming practices, which are performed either by a farmer or on a farm as an incident to or in conjunction with "such" farming operations (*Farmers Reservoir Co. v. McComb*, supra; *NLRB v. Olaa Sugar Co.*, 242 F. 2d 714; *Maneja v. Waialua*, 349 U.S. 254).

(d) Employment not within the scope of either the primary or the secondary meaning of "agriculture" as defined in section 3(f) is not employment in agriculture. In other words, employees not employed in farming or by a farmer or on a farm are not employed in agriculture.